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**FILED**

DISTRICT COURT OF GUAM

APR 24 2007

MARY L.M. MORAN  
CLERK OF COURT

**DISTRICT COURT OF GUAM  
TERRITORY OF GUAM**

TCW SPECIAL CREDITS, et al.,

Plaintiffs,

v.

F/V CHLOE Z, et al.,

Defendants.

VJEKO MAZIC,

Plaintiff-in-Intervention,

v.

M/V CHLOE Z, et al.,

Defendants.

Civil Case No. 96-00055

TCW SPECIAL CREDITS'  
SUPPLEMENTAL RESPONSE TO  
PRANJIC/MATOS MOTION TO  
WITHDRAW FUNDS

TCW Special Credits ("TCW") submits this Supplemental Response in reply to the Pranjic/Matos Reply Memorandum, filed April 17, 2007.

In their Reply Memorandum, Pranjic/Matos make the following defamatory and extraordinary charge:

TCW SPECIAL CREDITS' SUPPLEMENTAL RESPONSE TO  
PRANJIC/MATOS MOTION TO WITHDRAW FUNDS - 1

SEA 1995729v1 0039069-000040

1 TCW falsely represented to the district court the full  
2 amount of MATOS and PRANJIC claims and thereby  
3 converted \$5,000,000 out of the Court Registry improperly  
4 to TCW's benefit. In October, 2001, TCW wrongfully  
5 stated: "At this point it is irrefutably clear from the  
6 arithmetic that the remaining CHLOE Z Vessel Sale  
7 Proceeds are at least now \$5,500,000 in excess of the  
8 reserve need to satisfy the maximum possible in rem liens  
9 of all three personal injury claimants." See TCW's Motion  
10 for Partial Distribution of Vessel Proceeds, page 6, lines  
11 14-16... The above quote taken from TCW's Motion for  
12 Partial Distribution of Vessel Proceeds is both false and  
13 inaccurate. As a result of TCW's wrongful withdrawal,  
14 there are not adequate funds in the Court Registry to  
15 cover the MATOS and PRANJIC judgments in the amount  
16 of \$2,375,000.

17 Reply Memorandum, 3:7-21. The accusations against TCW are completely  
18 scurrilous.

19 The Court should be aware of the following:

20 1. All disbursements made to TCW have been by virtue of court order,  
21 entered on notice and hearing. TCW has received only what this Court has ordered  
22 that TCW receive.

23 2. TCW has never made any "withdrawals." TCW does not have the  
24 power to make "withdrawals." The proceeds from the sale of the vessel CHLOE Z,  
25 and her cargo, were deposited into the Registry of the Court. TCW at no time has  
26 held any of the money.

27 3. The TCW Memorandum, dated October 21, 2001, that is cited by  
28 Pranjic/Matos in their Reply Memorandum, was filed by TCW in support of its Motion  
29 for Summary Judgment on Promissory Notes, Mortgage and Other Collateral  
30 Instruments, and for Partial Distribution of Vessel Sale Proceeds to Mortgagee, and  
31 For Entry of Judgment in Accordance Therewith. (A full copy of TCW's October 21,  
32 2001, Memorandum is attached hereto as **Exhibit A.**) TCW's Motion was

1 extensively supported. TCW's motion was granted in a detailed Order entered  
2 February 19, 2002. (A full copy of the Order granting TCW's motion, dated February  
3 19, 2002, is attached hereto as **Exhibit B.**)

4  
5 4. All calculations set forth in TCW's moving papers were accepted by the  
6 Court, and a distribution of \$5,500,000 ordered to TCW in the February 19, 2002,  
7 Order.

8 5. The attorneys for Pranjin and Matos have made representations to the  
9 Court that entirely support TCW's 2001 calculations.

10 6. One such instance was the Amended Declaration of William O.  
11 Dougherty in Support of Payment of Vejko Mazic's Personal Injury Claim in Full from  
12 Res Proceeds, filed on or about June 6, 2002. (A copy of the Dougherty Amended  
13 Declaration is attached as Ex. 4 to CHLOE Z's Memorandum of Points and  
14 Authorities, Etc., filed January 19, 2007.) Mr. Dougherty was counsel for Mazic, who  
15 was the third of the three personal injury claimants (along with Pranjin and Matos).  
16 However, Mr. Dougherty was also counsel for Pranjin and Matos. See, Intervening  
17 Plaintiffs Robert Matos and Slobodan Pranjin Notice, Etc., filed April 2, 2001 ("Chloe  
18 Z has also deposed on multiple occasions Matos & Pranjin other lead  
19 counsel...William O. Dougherty." Notice, 18-21 (emphasis added); a copy of this  
20 Notice is attached as Ex. 5 to CHLOE Z's Memorandum of Points and Authorities,  
21 Etc., filed January 19, 2007.) Moreover, Guam local counsel George M. Butler was  
22 at all relevant times the attorney for all three claimants, Mazic, Pranjin and Matos.  
23 With that background, the statements made (under oath) by Mr. Dougherty are very  
24 important:  
25  
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1  
2 In addressing this issue the undersigned would refer the  
3 court to TCW's Motion For Summary Judgment on  
4 Promissory Note, Mortgage and Other Collateral  
5 Instruments and For Partial Distribution of Vessel  
6 Proceeds filed with this court on October 26, 2001, a copy  
7 of which is attached hereto and marked as Exhibit "I". In  
8 connection with that document, TCW sets forth the history  
9 and procedural background of this matter and further  
10 summarizes the *in rem* claims of Pranjic, Mazic and  
11 Matos.

12 Pranjic's *in rem* claims were tried to this court and  
13 resulted in a judgment in the sum of \$577,420.00 on or  
14 about January 11, 1999. The Ninth Circuit's ruling  
15 reduced the award by approximately \$44,000.00.

16 ...

17 Matos' *in rem* claims were tried to this court with  
18 the court entering its decision on February 19, 1999  
19 awarding judgment in the sum of \$621,514.00. The Ninth  
20 Circuit ruling with respect to pre-judgment interest in the  
21 matter, if awarded, could increase that sum by  
22 approximately \$242,000.00. Taking into effect the Ninth  
23 Circuit Court's ruling and allowing for post judgment  
24 interest the following represents a fair figure for the total  
25 liquidated *in rem* claims payable by lien on the Chloe Z  
26 vessel sale proceeds:

<u>Pranjic</u>	Trial Award \$577,420.00 (Ninth Circuit reduction \$44,000.00, accrued post judgment interest \$75,000.00) Total \$608,420.00.
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<u>Matos</u>	Trial Award \$621,514.00 (Potential Ninth Circuit increase for pre-judgment interest \$242,000.00, accrued post judgment interest \$120,000.00) Total \$983,514.00.
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...

As there is currently \$2,658,674.63 plus accrued  
interest on deposit with this Honorable Court, there are  
more than adequate funds in the registry to satisfy the  
perfected maritime liens of Mazic, Matos and Pranjic.  
[Even after the payment of Mazic's claim in full in the sum  
of approximately \$691,000.00 including interest to date,

1 the registry will still be left with \$1,965,000.00 to pay the  
2 Matos and Pranjic claims which total \$1,593,000.00 at  
3 most, leaving an excess of at least \$372,000.00.]  
4 Therefore it is respectfully requested that this court order  
5 payment of the Mazic claim in full at this time as it will  
6 clearly not compromise full payment of the claims of  
7 Matos and Pranjic once they have been determined.

8 Dougherty Declaration, June 6, 2002, 3:9 -- 4:14.

9 7. Another such instance is this: In its 2001 moving papers, TCW  
10 informed the Court that then outstanding balance owed on the Pranjic Judgment was  
11 \$584,095; and on the Mazic Judgment was \$945,547. (See, TCW Memorandum, Ex.  
12 A., 7:18-21 and 8:6-8.) The sum of those numbers is \$1,529,642. Again, that  
13 squarely closely with Pranjic's and Matos's own representations to the Court as to the  
14 amounts of their Judgment. See, e.g., Pranjic/Matos Opposition to TCW's Motion for  
15 Distribution of Remaining Vessel Sale Proceeds, attached as Exhibit 2 to CHLOE Z's  
16 Memorandum of Points and Authorities, Etc., filed January 19, 2007. There, Pranjic  
17 and Matos state:

18 In approximately 1999, Plaintiffs-in-Intervention Robert  
19 Matos... and Slobodan Pranjic...obtained judgments  
20 against the fishing vessel M/V Chloe Z totaling [sic]  
21 approximately \$1.4 million.

22 Pranjic/Matos Opposition, filed May 27, 2004, 2:3-5. Obviously, TCW's number of  
23 \$1,529,547 is materially similar to the Pranjic/Matos number of \$1.4 million.

24 8. The Court should understand, therefore, that TCW's representations to  
25 the Court have been entirely correct. What is happening here is that Pranjic and  
26

1 Matos apparently are now attempting to "gin up" the amounts of their Judgments, and  
2 then blame any apparent shortfall on other parties (and, implicitly, on the Court itself).

3 9. As always, TCW takes no position on the determination of the final  
4 calculation of the Pranjic and Matos Judgments. That issue is between the claimants  
5 and CHLOE Z.  
6

7 Dated this 24<sup>th</sup> day of April, 2007.

8 Attorneys for TCW Special Credits

9 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**

10  
11  
12 By 

13 JOHN B. MAHER

14 Craig Miller

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## CERTIFICATE OF SERVICE

I, John B. Maher, hereby certify that on April 24, 2007, I caused the annexed  
**TCW SPECIAL CREDITS' SUPPLEMENTAL RESPONSE TO PRANJIC/MATOS**  
**MOTION TO WITHDRAW FUNDS** to be served on the parties hereto, via First Class

U.S. Mail, to:

Dwight F. Ritter, Esq.  
**RITTER & ASSOCIATES**  
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Michael A. Barcott, Esq.  
**HOLMES WEDDLE & BARCOTT**  
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Seattle, Washington 98104

and via personal service, by delivering and leaving copies of same with:

George M. Butler, Esq.  
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Suite 201, C&A Professional Bldg.  
259 Martyr Street  
Hagatna, Guam 96910

Dated this 24<sup>th</sup> day of April, 2007.

**MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
**Attorneys for Plaintiff**  
**TCW Special Credits**

BY:

  
\_\_\_\_\_  
**JOHN B. MAHER**

# EXHIBIT A



RECEIVED  
ARRIOLA, COWAN & ARRIOLA

FILED  
DISTRICT COURT OF GUAM

OCT 26 2001

BY:                      TIME: 3:30p

OCT 26 2001

MARY LAL MOHAN  
CLERK OF COURT

Craig Miller  
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D. Paul Vernier, Jr.  
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3:06 p.m.  
OCT 26 2001

Law Office of  
BERNARD O'CONNOR  
& MANN

UNITED STATES DISTRICT COURT  
DISTRICT OF GUAM

RECEIVED BY

A-COP  
OCT 26 2001

ZAMSKY LAW FIRM

TCW SPECIAL CREDITS, et al.,

Plaintiff,

No. 96-00055

v.

FISHING VESSEL CHLOE Z, et al.,

Defendant.

TCW'S MOTION FOR SUMMARY  
JUDGMENT ON PROMISSORY  
NOTE, MORTGAGE AND OTHER  
COLLATERAL INSTRUMENTS;  
AND FOR PARTIAL DISTRIBUTION  
OF VESSEL SALE PROCEEDS TO  
MORTGAGEE; CERTIFICATE OF  
SERVICE

JUAN BARNADIARAN, et al.,

Plaintiffs-in-  
Intervention.

[ORAL ARGUMENT NOT  
REQUESTED]

RELATED CLAIMS-IN-INTERVENTION

Plaintiff TCW Special Credits ("TCW") moves for summary judgment on its claims on the defaulted promissory note, and the preferred ship mortgage and other collateral instruments securing the promissory note; and for distribution to TCW of a portion of the vessel sale proceeds.

TCW'S MOTION FOR SUMMARY JUDGMENT - I

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OCT 26 2001

TEKER CIVILE

TEKER CIVILE

1 TCW does not request oral argument.

2 As the Court knows, there has been a final, comprehensive settlement reached between  
3 TCW and Crew Claimants, and that settlement has been fully implemented. See, Stipulation and  
4 Order Approving Settlement, Etc. ("Settlement Approval Order"), entered September 19, 2001.  
5 The settlement between TCW and Crew was reached only after lengthy negotiation and mutual  
6 compromise. That settlement resolves litigation concerning the Crew wage claims that has lasted  
7 more than five years, and has included scores of motions to this court, a trial, and multiple  
8 appeals. TCW is therefore most pleased to be able to advise the Court of the settlement with the  
9 Crew.

10 Following in logical sequence from that settlement, TCW's present motion is a necessary  
11 next step toward the final completion of this litigation.

12 Relative to this motion, there are no facts in dispute.

13 **A. Summary Judgment and Order of Disbursal Requested.**

14 TCW requests entry of summary judgment against defendant Chloe Z Fishing Co., Inc.  
15 ("CZFC, Inc.") for money judgment on the sum certain owed by CZFC, Inc., on its defaulted  
16 promissory note (the "Term Loan Note"); and for foreclosure of the preferred ship mortgage  
17 ("Preferred Ship Mortgage") the F/V CHLOE Z, Official No. 653391 ("Vessel") and  
18 of the other collateral instruments sued on in TCW's verified Complaint.

19 As of September 30, 2001, the defaulted indebtedness owed by CZFC, Inc., on the Term  
20 Loan Note is \$19,225,956.01, exclusive of legal fees. Interest continues to accrued on the  
21 defaulted principal balance of the Term Loan Note at the rate of \$3,580.57 per diem, from  
22 September 30, 2001, until paid. Mazurek Declaration, ¶ 3.

23 TCW also requests an order disbursing to TCW proceeds of the sale of the Vessel, now  
24 held in the registry of the Court, but reserving in the registry ample funds for eventual  
25

1 satisfaction of liens as may be established by personal injury claimants Slobodan Pranjic, Robert  
2 Matos and Vjeko Mazic (together, "Personal Injury Claimants").

3  
4 **B. Evidence Relied Upon.**

5 In support of this motion, TCW relies on the following evidence:

- 6 1. The prior orders of this Court, as cited in this memorandum.
- 7 2. The Clerk's entry of defaults, on file in this action.
- 8 3. Declaration of Mariusz Mazurek, dated October 16, 2001, filed herewith.
- 9 4. TCW's verified Complaint ("TCW Complaint") and exhibits attached thereto, on  
10 file in this action.
- 11 5. Declaration of D. Paul Vernier, Jr., presenting the Statement of Account, dated  
12 October 24, 2001, from US District Court Office of the Clerk.

13 **C. History and Procedural Background of Case.**

14 As established in the verified TCW Complaint, TCW is the holder of the Preferred Ship  
15 Mortgage the CHLOE Z, which secures the obligations of the Vessel's owner, CZFC, Inc., under  
16 a Loan Agreement and Term Loan Note. TCW holds additional security for those obligations by  
17 virtue of CZFC, Inc.'s grants of security and assignment under a Security Agreement and  
18 Assignment of Insurances. To the best knowledge of TCW, no party in this action has ever  
19 materially contested the accuracy of any allegation made in the TCW Complaint.

20 The Term Loan Note was made and delivered by CZFC, Inc., on October 15, 1991. The  
21 original lender to CZFC, Inc., and the indicated payee on the Term Loan Note, is a Norwegian  
22 bank, Christiania Bank. However, TCW purchased Christiania Bank's interest in the Term Loan  
23 Note (and in all supporting collateral, including the Preferred Ship Mortgage) on June 30, 1995.  
24 CZFC, Inc.'s obligations under the Term Loan Note have been in default since July 1, 1993.

25 The TCW Complaint was filed on July 5, 1996.

1 TCW immediately moved for a warrant of arrest of the Vessel. The Vessel was forthwith  
2 arrested, as was her fish catch aboard ("Fish Catch").

3 Proper service and notice of the action and of the arrest was given to all interested persons.  
4 See, Certificate of Mailing, filed July 11, 1996 (notice given to all lien claimants); return of  
5 service on registered agent for CZFC, Inc., dated July 16, 1996; and Declaration of Maggie  
6 Castro, regarding publication of Notice in Pacific Daily News, filed July 18, 1996.

7 The Clerk on September 26, 1996, entered a Default against CHLOE Z and CZFC, Inc., as  
8 to TCW's Complaint. Also, on April 20, 1998, the Court entered an Order of Default Against  
9 All Non-Appearing Claimants to the Vessel and Against Chloe Z Fishing Co., Inc.

10 The following claimants asserted claims against the Vessel and/or its Fish Catch by way  
11 of complaints-in-intervention: Starkist Caribe, Inc. and Star-Kist Foods, Inc. (the Starkist parties  
12 together filed one complaint, on July 26, 1996); a group of unpaid seamen who served aboard the  
13 CHLOE Z ("Crew Claimants") (filed July 30, 1995, and amended and supplemented thereafter);  
14 Shell Guam, Inc. (filed August 19, 1996); and Clipper Oil Company (filed October 9, 1996); and  
15 the three Personal Injury Claimants.

16 An Order for Interlocutory Sale of the Fish Catch was entered on August 9, 1996. On  
17 August 20, 1996, the Fish Catch was sold at auction by the US Marshal for the winning bid of  
18 \$725,000. The proceeds of that sale ("Fish Catch Sale Proceeds"), net of certain sale costs, was  
19 deposited in the registry of the Court.

20 An Order for Interlocutory Sale of the Vessel was entered on October 17, 1996. On  
21 December 3, 1996, the CHLOE Z was sold at auction by the US Marshal for the winning bid of  
22 \$6,710,000. The proceeds of that sale ("CHLOE Z Vessel Sale Proceeds"), net of certain sale  
23 costs, was deposited in the registry of the Court.

1 The complaints in intervention of Starkist, Shell Guam, and Clipper Oil Company  
2 (collectively, "Trade Claimants"), were resolved by settlement with TCW reached in 1998. In  
3 order to achieve those settlements, TCW paid a substantial sum of money to each of the Trade  
4 Claimants, and received an assignment of the Trade Claimant's claim and lien rights. Mazurek  
5 Decl. ¶ 4 and Exs. B, C and D. TCW entered those settlements in an effort to simplify the  
6 litigation. At the time, TCW was well aware that the liens of the Trade Claimants were "out of  
7 the money," since the senior liens – namely, the custodia legis lien, the Crew wage lien, the  
8 Personal Injury Claimant lien, and the Preferred Ship Mortgage lien – would certainly consume  
9 all available Vessel Sale Proceeds and Fish Catch Proceeds (and yet still leave a multi-million  
10 dollar shortfall in the payment of the Preferred Ship Mortgage lien<sup>1</sup>).

11 As noted above, the claims of all Crew also have been resolved by settlements. All  
12 settlements, including settlements made early in the case (and specifically including the six  
13 disputed settlements) have now fully agreed, paid and resolved, and all Crew wage claims have  
14 been entirely and finally resolved. See, Settlement Approval Order, entered September 19, 2001.

15 The Settlement Approval Order authorized disbursal to the Crew of nearly the entirety of  
16 the Fish Catch Sale Proceeds; and further authorized disbursal of the then relatively small  
17 remaining balance of Fish Catch Sale Proceeds to TCW in partial satisfaction of TCW's approved  
18 custodia legis lien. Those disbursals exhausted the entire Fish Catch Sale Proceeds.

19 Therefore, as a result of the various settlements entered by lead plaintiff TCW, the case is  
20 much closer to final resolution, and now stands considerably simplified. The structure of the case  
21 is now as follows:

22  
23  
24 <sup>1</sup> It is a mathematical certainty that the multi-million dollar shortfall will exist even after  
25 realization on all collateral available in this case and in the case of TCW v. F/V KASSANDRA Z.,  
pending in the High Court of American Samoa.

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- There remains on deposit in the registry of the Court the total funds in the amount of \$7,742,869.29, as of October 24, 2001. Vernier Declaration. Those funds continue to accrue interest<sup>2</sup>. Those funds are the remaining CHLOE Z Vessel Sale Proceeds.
  - The only asserted liens against the CHLOE Z Vessel Sale Proceeds are:
    - **FIRST**, the in rem claims of the Personal Injury Claimants;
    - **SECOND**, the lien of the Preferred Ship Mortgage, held by TCW; and
    - **THIRD**, the liens of the Trade Claimants Starkist, Shell Guam, and Clipper Oil; however, as noted above, those liens have been assigned to TCW, following TCW's substantial payments to and settlements with the three Trade Claimants.

11 **D. Personal Injury Claimant Liens.**

12 The in rem claims of the three Personal Injury Claimants, Pranjic, Matos and Mazic, have  
13 now been substantially determined by the Court. All three in rem cases have been tried, appealed,  
14 and remanded.

15 At this point, it is irrefutably clear from the arithmetic that the remaining CHLOE Z  
16 Vessel Sale Proceeds are at least some \$5,500,000 in excess of the reserves needed to satisfy the  
17 maximum possible in rem liens of all three Personal Injury Claimants.

18 Here is the history of the in rem claims of the Personal Injury Claimants, leading to the  
19 present maximum liquidation value of those claims:  
20

21 <sup>2</sup> The interest being earned on the CHLOE Z Vessel Sale Proceeds invested by the Clerk  
22 compares favorably to the federal judgment interest rate. The investment rate now being paid on  
23 the funds, held in two instruments, one at the Bank of Guam and another at the Bank of Hawaii, is  
24 2.37% and 2.75%, respectively. By comparison, as of October 19, 2001, the current federal  
25 judgment interest rate is 2.37% (see, 28 U.S.C. §1961, specifying that, after December 21, 2000,  
the federal judgment interest rate is equal to the weekly average of 1-year constant maturity  
Treasury yield, which yield is available on the Federal Reserve website,  
[www.federalreserve.com](http://www.federalreserve.com).)

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- Pranjic's in rem claims were tried beginning July 27, 1998. The Court entered its trial decision on January 11, 1999. The judgment award was \$577,420. The Ninth Circuit's ruling reduced the award by about \$44,000.
  - Mazic's in rem claims were tried beginning July 15, 1998. The Court entered its trial decision on January 11, 1999. The judgment award was \$629,958. The Ninth Circuit ruling reduced the award by about \$43,000.
  - Matos's in rem claims were tried beginning July 20, 1998. The Court entered its trial decision on February 19, 1999. The judgment award was \$621,514. The Ninth Circuit ruling may (though not certainly) result in an increase to the award, with the addition of prejudgment interest. That prejudgment interest, if awarded, can reasonably be estimated at a maximum of, say, \$242,000 (6.5 years x 6.0%).

13 All three cases now await the trial court's decision on post-remand motions in accordance  
14 with the appellate court's opinions.

15 Therefore, accounting for the Ninth Circuit rulings, and allowing for post-judgment  
16 interest, the following is the total liquidated in rem claims, which are payable by lien on the  
17 CHLOE Z Vessel Sale Proceeds:

18 Pranjic

19 Trial Award	577,420
20 Ninth Circuit Reduction	(44,000)
21 Accrued Post Judgment Interest <sup>3</sup>	50,675
22 Total	584,095

23 <sup>3</sup> This interest (for all three Personal Injury Claimants) is calculated at: 1 year x 6.0% + 1 year x  
24 3.5%, a very liberal estimation reflecting both the date of remand of the these cases and the  
25 applicable federal judgment interest rates since that date (the reference instrument used to  
determine the federal judgment interest rate changed as of December 21, 2000).



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1 (still leaving, as noted above, a substantial deficiency on the Ship Mortgage Lien). At that point,  
2 the case will be concluded.

3 **E. Lien Priority.**

4 There is no issue as to lien priority.

5 As a matter of law, the lien priority is as follows:

6 (1) TCW's lien for custodial expenses [now fully paid];

7 (2) Crew's wage liens [all Crew claims are resolved and fully  
8 paid];

9 (3) maritime tort liens of the Personal Injury Claimants' in rem  
10 claims [liquidated to maximum amount of \$2.2million, not yet  
11 paid];

12 (4) TCW's preferred mortgage lien [liquidated and undisputed;  
13 not yet paid]; and

14 (5) the Trade Claimants' liens [all paid by TCW, and assigned  
15 and held by TCW].<sup>5</sup>

16 See 46 U.S.C. §§ 31325, 31326; Cargill, Inc., Skibsassuranceforening v. M/T Pacific Dawn, 876  
17 F. Supp. 508, 510-11 n.2 (S.D.N.Y. 1995); United States v. One 254 Ft. Freighter, M/V Andoria,  
18 570 F. Supp. 413, 415 (E.D. La. 1983), aff'd, 768 F.2d 597 (5th Cir.1985); T. Schoenbaum,  
19 Admiralty and Maritime Law § 8-6 (1987).

20 TCW stipulates that the in rem liens of the Personal Injury Claimants, to the extent finally  
21 determined, are senior to TCW's Preferred Ship Mortgage lien and to the Trade Claimants' liens  
22 now held by TCW as assignee.

23  
24 <sup>5</sup> Because the proceeds of the CHLOE Z are insufficient to satisfy TCW's preferred mortgage  
25 lien, the priority of the remaining claims is insignificant.

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# EXHIBIT B

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15 Attorneys for Plaintiff  
16 TCW Special Credits

17 UNITED STATES DISTRICT COURT  
18 DISTRICT OF GUAM

19 TCW SPECIAL CREDITS, et al.,

20 Plaintiff,

21 v.

22 FISHING VESSEL CHLOE Z, et al.,

23 Defendant.

24 JUAN BARNADIARAN, et al.,

25 Plaintiffs-in-  
26 Intervention.

RELATED CLAIMS-IN-INTERVENTION

No. 96-00055

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT ON PROMISSORY  
NOTE, MORTGAGE AND OTHER  
COLLATERAL INSTRUMENTS;  
AND FOR PARTIAL DISTRIBUTION  
OF VESSEL SALE PROCEEDS TO  
MORTGAGEE; AND FOR ENTRY OF  
JUDGMENT IN ACCORDANCE  
THEREWITH; CERTIFICATE OF  
SERVICE

27 Having considered the motion for summary judgment and related relief brought on for  
28 regular hearing by plaintiff TCW Special Credits ("TCW") and finding the motion to be well

RECEIVED

29 [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR  
30 SUMMARY JUDGMENT - 1

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McKEOWN . VERNIER .

PRICE . MAHER

DATE: 2/21/02

TIME: 8:29a

BY: [Signature]

1 taken, the plaintiff's motion for summary judgment and related relief is GRANTED, and NOW,  
2 THEREFORE:

3 IT IS ORDERED, ADJUDGED AND DECREED:

4  
5 1. This Court has subject matter jurisdiction over this cause in that this is a civil case  
6 of admiralty and maritime jurisdiction under 28 U.S.C. § 1333, and is within the scope of Federal  
7 Rule of Civil Procedure 9(h), and is an action to enforce a maritime lien under the Supplemental  
8 Rules for Certain Admiralty and Maritime Claims. The F/V CHLOE Z, Official No. 653391  
9 ("Vessel") was within the navigable waters of the District and within the jurisdiction of this  
10 Court, at the date of her arrest, on or about July 5, 1996. Service of process on all parties and  
11 publication of notice of arrest of the Vessel and of this action was timely completed in proper  
12 form. The Clerk on September 26, 1996, entered a Default against the Vessel and its owner  
13 Chloe Z Fishing Co., Inc. ("CZFC, Inc."), as to TCW's Complaint. Further, on April 20, 1998,  
14 the Court entered an Order of Default Against All Non-Appearing Claimants to the Vessel and  
15 Against CZFC, Inc.  
16

17 2. TCW is the assignee, holder and mortgagee of a valid, senior Preferred Ship  
18 Mortgage on the Vessel. The Preferred Ship Mortgage (together with an Assumption of Ship  
19 Mortgage) was duly and properly recorded in the records of the Department of Transportation,  
20 United States Coast Guard, at Honolulu, Hawaii, on February 15, 1990, in Book PM-33, Page 54,  
21 and at Seattle, Washington, on November 18, 1991, in Book PM 208, Page 148.  
22

23 3. The Preferred Ship Mortgage is security for the obligations of CZFC, Inc., under  
24 the Amended and Restated Promissory Note ("Term Loan Note"), and related Loan Agreement,  
25

26 [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT - 2

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1 as alleged in TCW's Complaint. All amounts owed by CZFC, Inc., under the Term Loan Note, as  
2 secured by the Preferred Ship Mortgage, are and constitute a senior lien on the Vessel.

3 4. TCW is the holder of additional security under the Security Agreement and  
4 Assignment of Insurances. Those collateral instruments provide additional collateral for the  
5 obligations of CZFC, Inc., sued on herein. Those instruments are enforceable according to the  
6 their terms. By virtue of the Security Agreement, TCW holds a senior perfected lien on all  
7 Collateral described and defined in that instrument, as security for all obligations of CZFC, Inc.,  
8 to TCW. By virtue of the Assignment of Insurances, TCW is the assignee and holder of a senior  
9 perfected lien on all CZFC, Inc.'s rights to receipt of indemnifications, payments or proceeds  
10 from the Insurances, as defined in Assignment of Insurances and including any and all  
11 indemnifications, payments and proceeds relative to protection and indemnity insurance covering  
12 CZFC, Inc.'s, the Vessel's or TCW's losses and/or payments (and including payments made by  
13 disbursements from the CHLOE Z Vessel Sale Proceeds on deposit in the registry of the Court)  
14 relative to the in rem claims of personal injury claimants Slobodan Pranjic, Robert Matos and  
15 Vjeko Mazic.

16 5. CZFC, Inc., has been continuously in default in its obligations under the Term  
17 Loan Note since July 1, 1993. Plaintiff TCW is hereby awarded money judgment against  
18 Defendant CZFC, Inc., in the sum of \$ 19,687,849.54. Interest shall accrue on that judgment  
19 amount from date of entry of judgment until paid, in accordance with Title 28 U.S.C. § 1961.  
20

21 6. The Vessel was sold on an interlocutory basis pursuant to the Order for  
22 Interlocutory Sale, entered October 17, 1996. An Order confirming sale of the was entered  
23

24 [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR  
25 SUMMARY JUDGMENT - 3  
26 C:\DOCUMENTS\CIVIL\TCW\PROPOSED ORDER RE TCW MSJ 102601.DOC

1 December 17, 1996.

2 7. All properly and timely filed and perfected maritime liens on the Vessel attach to  
3 the net proceeds of the sale of the Vessel ("CHLOE Z Vessel Sale Proceeds"). The CHLOE Z  
4 Vessel Sale Proceeds remain on deposit in the registry of the Court, together with accrued  
5 interest, and net of such disbursements that have been allowed under prior orders of this Court.  
6

7 8. TCW has entered settlements with plaintiffs in intervention Starkist Caribe, Inc.,  
8 and Star-Kist Foods, Inc.; Shell Guam, Inc.; and Clipper Oil Company (all collectively, "Trade  
9 Claimants"). The settlement agreements are as presented as Exhibits B, C and D to the Mazurek  
10 Declaration, dated October 16, 2001. Those settlements are confirmed and approved, and TCW is  
11 adjudged and confirmed as the holder of all claims and liens asserted in the complaints-in-  
12 intervention filed by the Trade Claimants.  
13

14 9. The liens now remaining and each attaching to the entirety of the remaining  
15 CHLOE Z Vessel Sale Proceeds, in order of priority are as follows:

16 First, in pari pasu, the in rem liens, to the extent as may be ultimately proven and  
17 sustained, securing the maritime tort claims against the Vessel asserted by Slobodan Pranjic,  
18 Robert Matos and Vjeko Mazic ("Personal Injury Claimants");  
19

20 Second, the lien of the Preferred Ship Mortgage and of the Security Agreement, in favor  
21 of and held by TCW; and

22 Third, the liens of Starkist Caribe, Inc. and Star-Kist Foods, Inc.; Shell Guam, Inc.; and  
23 Clipper Oil Company (collectively, "Trade Claimants"). The liens of the Trade Claimants have  
24 been assigned to and are now held by TCW.  
25

26 [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT - 4

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10. As of October 24, 2001, there is in the Clerk's registry CHLOE Z Vessel Sale Proceeds in the total amount of \$7,742,869.29. The CHLOE Z Vessel Sale Proceeds continue to accrue interest.

11. TCW shall have a disbursement of \$5,500,000.00 from the Vessel Sale Proceeds, and disbursement in that amount is hereby ORDERED. Accordingly, the Clerk of the Court is directed forthwith to disburse funds in that amount payable to the Trust Account of D. Paul Vernier, Guam local counsel for TCW.

12. Following that disbursement, there will remain CHLOE Z Vessel Sale Proceeds adequate for the satisfaction of all possible liens held by the Personal Injury Claimants.

13. The Clerk of the Court is directed to enter judgment in accordance herewith.

DONE IN OPEN COURT this 19<sup>th</sup> day of February, 2002.

/s/ John S. Unpingco

JUDGE

Presented by:

*Attorneys for TCW Special Credits*

McKEOWN VERNIER PRICE MAHER

By

D. Paul Vernier, Jr.

Notice is hereby given that this document was entered on the docket on 02/20/02. No separate notice of entry on the docket will be issued by this Court.

Mary L. M. Moran  
Clerk, District Court of Guam

By: [Signature]

for the Clerk

Date: 02/20/02

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT - 5

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